From: Paul Benson
To: Microsoft ATR
Date: 1/10/02 4:23pm
Subject: U.S. vs. MICROSOFT:

Judge Kollar-Kotelly,

I recently received an email concerning U.S. vs. MICROSOFT:,

It was entitled

FIVE FUNDAMENTAL FLAWS IN THE PROPOSED
AGREEMENT BETWEEN THE U.S. DEPARTMENT OF
JUSTICE AND MICROSOFT -
AND WHAT YOU CAN DO ABOUT IT

As it urged me to email your office and join in the chorus of lament against
Microsoft, I felt the need to voice an opinion that is contrary to theirs. I
am not saying that I support all of Microsoft actions and don't think that
safe guargs should not be in place, I just question as to what would be
appropriate action and what would simply "whiny little children" getting
their way!!

The biggest problem the industry faces from Microsoft is also the the
greatest benefit that Microsoft has brought to the software industry. That
is its success in marketing its DOS and now its Windows platforms. It has
made it difficult for other operating system platforms to get established ,
yet compete. At the same success has brought stability to the software
marketplace. A software applictaion development company does not have to
worry about having to write for a multitude of platforms. It can simply put
out a good product for Windows that fills a need, and be assured that he has
a large marketplace. The only risk here is that Microsoft could develop a
competing product, after it has seen the financial success of the pioneering
company, and leverage its marketing skill, deep pockect, and built in user
list to out compete the pioneer. Yet Microsoft's past experience has shown
that what is usually done is that Microsoft will offer the original company
an offer that they can not refuse (i.e. lots of money, a position within
the company, and unlimited ability to develop new products :))

Over the past years it seems to me that those that scream the loudest are
those who have made poor business decisions, lost market share, and would
rather blame Microsoft than accept their own mistakes!

Many of the claims within the email that was forwarded to me are conflicting
and to cross purposes.

The would be backers of this document want Microsoft to not compete with

them and to include items that they deem to be useful. How would the industry be if every one could dictate to every one else what they could and could not do.

I may not agree with many of Microsoft's business practices (its bundling agreements for instance) but find that documents such as this are why nothing practical gets done. They whine so loudly about Microsoft being a successful business, that the real problems go on solved.

It sort of like one sibling yelling about his/her sibling so loudly that they become the problem and the sibling gets ignored.

Considering the inherent problems with Java, it is perhaps best if it is not included with Windows, after all Microsoft would be prohibited from fixing it and making it work with windows.

Or perhaps Microsoft should be forced to include Visual Basic, Visual C++, Tcl, Python, Eiffel, Pike, Perl, Ruby, and the other languages which are ubiquitous and omnipresent within the development and internet community as part of the Windows distribution. Perhaps they should be forced to make "asp" and ".net" technologies available for Linux, Sun, and Mac platforms.

A collegue wrote and had the following observations:

My experience with Anti-Trust and Nintendo certainly influence my feelings about Microsoft's situation. I am sure that Sun or Oracle, in Microsoft's position would act in exactly the same manner. I don't want Microsoft to be replace by Sun or Oracle as the reigning monopoly. I like Microsoft products and work with people who absolutely "hate" Microsoft.

At our firm, we were always panicked that Microsoft would eliminate the need for our software by baking it's capabilities into the operating system. We were very cautious with Microsoft "evangelists" and tried to keep low key.

I personally would like to see Microsoft punished more severely than what seems to be happening but I do not want them destroyed.

The formost concern from software developers is being squashed by the Microsoft the behemoth.
The possibility of Microsoft replicating a proven proprietary software application or trade secret and including it as a "feature" of it's Windows operating system or as a Microsoft application.

This practice goes on in most industries and is the formost reason for the demise of small, inovating manufactures. They develop a proprietary product, which may be a trade secret but is not patented. A larger more established

company in the field duplicates the product, introduces it into it's
established distribution system, and locks the smaller company out of the
market by its sheer presence. Often distributors will not buy initially from
the smaller firm because they are new and the distributor is not sure of its
stability. after all they don't want to invest in the development of a
market for a new product if they may not be able to get the prpduct in
enough quantity to statisfy the demand. Yet when the more established
company duplicates the product, they immediately pick it up from them.
Denying the original, innovative company the market, growth profit, and
assuring the failure of the smller company. Sort of a self fulling prophecy.

However, as can be seen by the numerous suggestions as to how Microsoft
should be punished. No one has a clear idea of how to solve this problem. It
does not seem to lie within the "evil" nature of microsoft, but to be more a
symptom of a "systemic" problem with the innovtive process and the
established, entrenched, monied market place. It would appear that the
Eighteenth Century concept of patent does not serve its original intention
of protecting the developer of an idea very well. The original mission of a
patent was to encourge the development of new ideas by protecting them for a
period of time. Now the costs of acquiring and protecting a patent are so
high that many small innovators are frozen out of the process. And in an
area where change is so rapid, several months to a couple of years, the
patent review time which may be several years negates any effective
protection which may be afforded. By the time a patent is awarded it may
already have been superceeded.

The real solution may be legislative in nature, leading to the adoption of
an interim patent that prevents duplication of an existing product for a
short period of time, (2-3 years max). That would allow the developers of
the product sufficient time to establish the product and be granted a
patent, and yet prevent vulture firms from stealing their ideas.

With out this, innovation will be stiffled, and research will be left to
institutions and large corporations.

The PC and software industry owes its success history and growth to the fact
that at its inception the giants of the computing industry had no faith in
the establishment of a "Personal Computer" industry. Otherwise IBM, Rand,
DEC and other Giants would have owned the industry and it would have been
Microsoft crying about IBM's dominance that you would be reviewing (after
all the first monopoly suit in the computer industry was against IBM).

I would like to thank you for taking the time to read this email and would
hope that you would find it informative and useful. This is a complicated
issue. My sympathies go out to you

Sincerely

Paul A. Benson

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